

RUMSON ZONING BOARD
JANUARY 18, 2022
MEETING MINUTES

The regularly scheduled virtual meeting was called to order at 7:30 pm with a salute to the flag, followed by a roll call of: Mr. Brodsky, Mr. Torcivia, Mr. Blum, Mrs. Carras, Mr. Hofferber, Mr. Shissias, Mrs. McGill, Mr. Izzo
Absent: None

Also present, Bernard Reilly, Esq., Fred Andre', Zoning Officer, Kendra Lelie, representing T&M Associates and Eric Paone Hurd, Moderator.

The notice requirements of the Open Public Meetings Act were stated as being met.

Fred Andre', the Borough Zoning Officer was sworn in.

Mr. Reilly recommended that due to the unusual circumstances that occurred at the December 14th Special Meeting for The Peach Pit, L.L.C. application that the Board should consider reopening of the matter and a possible revote. Mr. Reilly prepared a Certification signed by Gabrielle McGill, Alternate #1 upon her Oath stating the following:

"1. I am Alternate #1 on the Borough of Rumson Zoning Board and serving with the Rumson Zoning Board during the year 2021.

"In that capacity I personally attended the hearings on the Peach Pit, L.L.C. application conducted on June 15th, June 20th, September 21 and October 19, 2021 all conducted by ZOOM video conference.

"2. On December 14, 2021 I was again present at the inception of the ZOOM hearing conferencing in on my phone. After a limited period I also accessed the hearing by my personal computer and continued in attendance at the hearing.

"3. At or around 10:30 pm a short recess was called by the Chairman. I continued in attendance monitoring the hearing on my computer. At that point the roll was called. I attempted to go unmute myself on the computer to speak and alert the Board to my continued attendance but was unable to break in and speak.

"As I could see the Board Members and hear the deliberations my impression was that they could also see me, and the error would be corrected.

"4. The vote was then taken. I continued to be unable to unmute myself and contact the Board. I thereafter sent an email to the Board Chairman advising him that I had attended the entire meeting and had not voluntarily left the meeting.

"5. I certify the foregoing statement is a true. I am aware that if it's deliberately false I am subject to sanction."

Mr. Reilly advised that the logical and appropriate way to go forward in these unusual circumstances is first, it would require a motion to reopen the deliberations and possibly a revote and that motion would require a four-member majority to vote in favor to reopen the matter and reopening the deliberations. Should the Board vote to reopen the Board Members are not bound by their previous vote or what they did or didn't do at the previous deliberations and take a new vote.

If the Board decides to reopen the deliberations and if there is Motion to approve the application with whatever conditions are deemed appropriate, that motion would require five affirmative votes. If the Motion fails and there is no subsequent Motion to approve the application with other conditions, that Motion would fail.

Then a Motion to deny the application should be offered and seconded, and if that Motion gets the appropriate votes it would carry.

The public comment portion will not be reopened.

Mr. Reilly advised that the attorneys involved in the application should be allowed to address the Board on this limited issue.

John Miller, Esquire sitting in for Ronald Cucchiaro on behalf of Thomas Giamo, placed his objection to any statements by the applicant's attorney pertaining to the merits of the application.

Sean Byrnes, Esquire on behalf of the Coffenbergs, addressed the Board. The recommended process was set forth in a legal memorandum weeks ago without being challenged. If there was a legal argument to be made challenging the process as opposed to offering something with respect to the vote, that should have been done prior to this meeting.

Jennifer S. Krimko, Esquire on behalf of the applicant addressed the Board. At the beginning of the December 14th Special Meeting there was insufficient Board Members in attendance. After a brief recess, another roll call was taken listing all Board Members present. Upon reconvening after an approximate 10:30 recess, it was announced that Ms. McGill was no longer on the ZOOM meeting. The meeting resumed with no effort was made to inquire the reasoning nor whereabouts of Mrs. McGill.

The Municipal Land Use Law provides that alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member. The MLUL further states that alternate members shall vote in the order of their numerical designation.

At the time the vote was taken on December 14th, there were only six regular members present so an alternate was needed to vote in the absence of a seventh regular member. Since it was announced at 10:30 pm that Alternate #1 had left the ZOOM meeting and was no longer available, when it came time for the vote Alternate #2 properly voted in place of the seventh regular member.

Regardless of whether Alternate #1 was on the ZOOM call and was able to hear all the testimony and discussion, she was unable to participate. Whatever the reason for this unfortunate, electronic mishap, it does not change the fact that she was electronically absent for the vote. As such Alternate #2 voted in her place.

The MLUL states, "A vote shall not be delayed in order that a regular member may vote instead of an alternate member."

It is obvious that the law would also require that a vote not be delayed in order to allow one alternate member to vote in preference over another

A Board is not allowed to delay a vote in order to cherry-pick which board members it prefers to participate in such a vote.

Alternate #1 was absent in that she was unable to participate in the deliberation and/or the vote. Absent is not defined in the MLUL in the context of electronic hearings, being muted or unable to properly connect to the proceedings is the equivalent of not being physically present for in-person vote.

At the time of the deliberations and the vote, Alternate #1 was assumed missing from the meeting, was functionally missing from the meeting, since she could not audibly participate. In her absence the Board turned to Alternate #2 to vote.

Since the vote was lawful and in full compliance with the MLUL it would be improper to reopen the matter for another vote.

If the Board does reopen the vote it could be interpreted to mean that the Board prefers the vote of Alternate #1 over Alternate #2, which is in direct contravention of the clearly delineated process of N.J.S.A. 40:55D-69.

Ms. Krimko respectfully requests that the Board deny any motion to reopen the vote to allow Alternate #1 to vote in place of Alternate #2. The vote on December 14th was lawful and in full compliance with the MLUL and therefore should not be disturbed.

Mr. Reilly advised that it is now up the Board to determine the course of action in this matter.

After discussion Chairman Brodsky asked for the pleasure of the Board.

Mr. Blum made a Motion to reopen the deliberations and vote on the matter; Seconded by Mr. Torcivia.

Roll call vote:

Ayes: Chairman Brodsky, Mr. Torcivia, Mr. Blum, Mrs. McGill

Nays: Mrs. Carras, Mr. Hofferber, Mr. Shissias

Mr. Torcivia stated that his main concern was the clienteles' safely travelling to and from the site and if that issue could be satisfactorily addressed with perhaps a sort of monitoring system during peak times. Mr. Reilly advised that requiring an employee to assist during certain

hours would be a reasonable condition and could be modified in the future.

Mr. Blum felt that this should be a black and white revote on the motion made at the last meeting and should be without supplementation or subtraction from the record. And was uncomfortable with conditions being added at this juncture.

Chairman Brodsky agreed with Mr. Torcivia and stated that the easement should only be for vehicles use and not pedestrian traffic. There need to be appropriate buffering in the rear and the food service deliveries be eliminated.

Mrs. McGill was concerned that historically this is a dangerous area for picking up and dropping off children and adding another venue with children travelling by any means to and from will only exacerbate those hazardous conditions. Mrs. McGill felt this proposal was awesome but not a good fit in this location.

Mrs. Carras stated that currently the area already has a high presence of youth traffic and doesn't see the proposal as problematic.

Mr. Shissias agreed that there are safety issues but that is inherent in any business district.

Mr. Reilly inquired whether Ms. Krimko's client would agree to extend these deliberations through to the next meeting and to consider the comments that have been made.

Ms. Krimko suggested that the Board might motion to approve conditioned upon the applicant providing a management submission subject to the review and approval of the Board and appropriate Borough officials.

Mr. Byrnes and Mr. Miller objected to additional submissions being provided without public scrutiny and not subject to objectors' opportunity to comment on.

Chairman Brodsky stated that in the past there have been changes recommended by the Board and the Board has voted with the expectation that after review by the Board and the Board's professionals the plans and/or procedures will be acceptable prior to the adoption of a resolution.

Chairman Brodsky asked the pleasure of the Board. Mr. Torcivia made a Motion to approve the application subject to the following conditions: The takeout and food delivery service is eliminated from the proposal. A management plan submitted for review and approval to adequately provide for the safety of activities in or around the premises. Landscape plan to provide for buffering along the rear property line. The Motion was seconded by Mrs. Carras.

Roll call vote:

Ayes: Chairman Brodsky, Mr. Torcivia, Mrs. Carras, Mr. Hofferber, Mr. Shissias

Nays: Mr. Blum, Mrs. McGill

A brief recess is taken.

Upon reconvening the following roll call takes place: Mr. Brodsky, Mr. Torcivia, Mr. Blum, Mr. Hofferber, Mrs. Carras, Mr. Shissias, Mrs. McGill, Mr. Izzo

Mr. Reilly administered the Oath of office to the following members: Mr. Brodsky, Mr. Hofferber, Mr. Torcivia, Mr. Blum, Mr. Shissias, Mr. Izzo

At this time the annual reorganization of the Zoning Board is conducted in the following manner:

Mr. Trocivia nominated Mr. Brodsky to the Chairman position of the 2022 Zoning Board; Seconded by Mrs. McGill.

Roll call vote:

Ayes: Mr. Torcivia, Mr. Blum, Mr. Hofferber, Mrs. Carras, Mr. Shissias, Mrs. McGill, Mr. Izzo

Nays: None

Abstain: Mr. Brodsky

Chairman Brodsky nominated Mr. Torcivia to the Vice Chairman position of the 2022 Zoning Board; Seconded by Mr. Blum.

Roll call vote:

Ayes: Chairman Brodsky, Mr. Hofferber, Mrs. Carras, Mr. Shissias, Mrs. McGill, Mr. Izzo, Mr. Blum

Nays: None

Abstain: Mr. Torcivia

Mr. Hofferber made a Motion to approve the Resolution appointing Bernard M. Reilly, Esquire as the 2022 Board Attorney; Seconded by Mr. Torcivia.

Roll call vote:

Ayes: Chairman Brosky, Mr. Torcivia, Mr. Hofferber, Mrs. Carras, Mr. Shissias, Mrs. McGill, Mr. Izzo, Mr. Blum

Nays: None

Abstain: None

Mr. Shissias made a Motion to approve the Resolution appointing T&M Associates as the 2022 Board Engineering firm; Seconded by Mrs. Carras.

Roll call vote:

Ayes: Chairman Brosky, Mr. Torcivia, Mr. Hofferber, Mrs. Carras, Mr. Shissias, Mrs. McGill, Mr. Izzo

Nays: None

Abstain: Mr. Blum

Chairman Brodsky announced that the application of William and Katherine Thompson for property located at 2 Robin Road has been withdrawn.

Chairman Brodsky asked for comments on the December 14, 2021 Zoning Board Special Meeting Minutes. Mr. Hofferber made a Motion to approve the Minutes as submitted; Seconded by Mrs. McGill. By voice vote the December 14, 2022 Minutes were approved.

There being no further business motion was made and seconded to adjourn for the evening at approximately 9:30 pm.

The next regularly scheduled meeting will be held virtually on **February 15, 2022** at 7:30 p.m.

Respectfully submitted,
Michele MacPherson